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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

CC Docket No. 02-33

Appropriate Framework for Broadband
Access to the Internet over Wireline Facilities

Universal Service Obligations of Broadband
Providers

Computer III Further Remand Proceedings:)
Bell Operating Company Provision of)
Enhanced Services; 1998 Biennial Regulatory)
Review – Review of Computer III and ONA)
Safeguards and Requirements)

CC Dockets Nos. 95-20, 98-10

Inquiry Concerning High-Speed Access to the)
Internet Over Cable and Other Facilities)

GN Docker No. 00-185

Internet over Cable Declaratory Ruling)
)

Appropriate Regulatory Treatment for Broadband)
Access to the Internet Over Cable Facilities)

CS Docket No. 02-52

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OF AARP

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October 31, 2002

AARP appreciates the opportunity to submit this letter and attached report in response to a variety of proceedings currently before the Federal Communications Commission (FCC) on issues relating to competitive telecommunications markets. Our ex parte submission today will address several proceedings, highlighting AARP's desires and concerns as the FCC moves forward with this spectrum of issues. In short, **AARP** remains confident that proper implementation of the Telecommunications Act of 1996 (the Act) will prove beneficial to consumers. Our letter will outline the interests we have in retaining the Unbundled Network Elements Platform (UNE-P) and Total Element Long Run Incremental Cost (TELRIC) provisions of the Act as a means to protect consumers and promote competition. We will also voice our concern with the Commission's preliminary actions to relieve all broadband Internet access facilities of open access obligations. AARP believes that open access is the only pro-competition policy that will protect the current success and the future promise of the Internet. Buttressing that position is a paper we are submitting for the record by Dr. Trevor R. Roycroft of the J. Warren McClure School at Ohio University. Commissioned by AARP's Public Policy Institute, Dr. Roycroft's *The End of Telecommunications? An Epilogue to Tangled Web: The Internet and Broadband **Open** Access Policy*, argues for maintaining the existing definition of broadband as a telecommunications service and mirrors AARP's view that regulatory parity means open access to all telecommunication service platforms.

AARP is troubled by recent actions of the carriers, the courts and the Commission to amend critical provisions in the Act that would alter the existing UNE-P and TELRIC measures. We believe that, ultimately, competition will not be sustained in the long run if it is not facilities-based. However, in the interim, it is imperative that competitive local exchange carriers have the opportunity to lease items from the unbundled network elements platform. It is also important that they be able to do so **at** TELRIC prices. As part of its Triennial review process, the Commission will be making critical decisions, the impact of which will either retard or promote competition in a variety of telecommunications services. Abandoning the provision requiring the leasing of unbundled network elements to competitors and doing so without a uniform pricing structure would be tantamount to foreclosing competition for the foreseeable future. **AARP**

urges the Commission to retain the competitive framework UNE-P provides while maintaining the TELTUC pricing structure the courts have upheld.

Additionally, AARP is quite concerned over the direction the Commission appears to be taking in its approach to broadband services. Many of the benefits of ubiquitous and affordable access to broadband networks will be of particular value to older Americans. For example, with a broadband connection to support monitoring devices and interactive video, home health care becomes a viable option for many consumers, particularly those with limited mobility or those who may not be well enough to travel. A broadband connection also facilitates lifelong learning opportunities at convenient times and places, especially for individuals who have jobs, disabilities, or family responsibilities that make it difficult to travel to a classroom. With a broadband connection, telecommuting becomes a more realistic option for workers and their employers.

The benefits of telecommuting with a high-speed connection may be particularly attractive to older workers. According to a recent AARP study on work and careers, 69 percent of workers age 45 to 74 plan to work in some capacity during their retirement years.¹ Many of these people, however, want to work on different terms, with more flexibility and autonomy, than they did during their earlier careers. In fact, 70 percent of older workers say they are looking for ways to better balance their work and personal lives and 41 percent report that the ability to **work** from home is an absolutely essential part of their ideal job.² Affordable access to the high-speed Internet makes this a realistic possibility.

The full potential of a broadband Internet may not be realized, however, if the owners of broadband Internet access networks are able to exercise control over Internet content and stifle competition in the Internet service marketplace. The astonishing growth of the narrowband Internet over the past decade and the benefits that have resulted from its development have occurred, in large part, because of FCC policies that ensured that consumers had open and

¹ Staying Ahead of the Curve: The AARP Work and Career Study, September 2002, p. 6

² Ibid, pp. 6, 92.

unfettered access to and use of the Internet, Internet content, and other on-line services. In contrast, recent FCC decisions on broadband access policy threaten to inhibit innovation and consumer choice and produce a broadband marketplace characterized by a monopoly or tight oligopoly.

The FCC has tentatively classified cable modem service as an information service rather than a telecommunications service, as the FCC has defined it in the past. This is a critical distinction that impacts *the* federal, state and local regulatory schemes under which cable services fall. Telephone company broadband facilities are a technological platform that has been subject to open access requirements and regulation for many years. In AARP's view, the proposed changes represent a departure from access and nondiscrimination policies that have kept the narrowband Internet marketplace competitive. The high-speed access facility pathway, provided either over cable infrastructure or telephone company infrastructure, does not, in and of itself, create a single information service. The high-speed Internet access facility simply allows a more efficient use of the information services that are provided by Internet service providers. Transmission speed has never been a relevant criterion for distinguishing a telecommunications service from an information service.

The Commission has also avoided making a decision about the appropriate regulatory treatment of high-speed transmission facilities that cable companies control. AARP is concerned that these preliminary findings, if ordered, would effectively block open access to cable company broadband infrastructure and threaten competition on the Internet. In approving the AOL Time Warner merger *with* conditions, the FCC recognized that dominant cable companies have the ability and incentive to harm consumers in the residential high-speed Internet access services market. Cable companies can discriminate against content providers that may compete against cable-company-affiliate providers of Internet content and e-commerce. Cable companies can influence a user's Internet choice without the user being **aware** of the interference. Cable companies, because they control broadband Internet access facilities and high-speed data networks, as well as sources of Internet content, have the greatest potential to interfere with the openness of the Internet structure and to reduce the benefits that have been generated by the open

architecture of the Internet. Providing access to the cable platform would temper many of these concerns.

Even more problematic to AARP is the Commission's stated interest in exploring the removal of the Computer Inquiry framework as it relates to broadband Internet access facilities controlled by telephone companies. As Dr. Roycroft explains in the attached report, "The regulatory environment that resulted from the Computer Inquiries is likely the only reason why the Internet has emerged as the hothouse of innovation and competition from which the public has received tremendous benefit. If telephone companies had been allowed to discriminate against ISPs, it would be very likely that competition would have been crushed, and that a very different Internet would have emerged."

These actions at the FCC and recent developments in the marketplace prompted AARP's Public Policy Institute to commission Dr. Roycroft to update an earlier AARP report on broadband open access policy and provide policy options for sustaining competition in the market for Internet access services. We submit this new report and urge the Commission to implement the following policy options as a means to protect competition for broadband Internet services:

- Require cable companies to provide open access to their networks, thus offering customers a choice of ISPs.
- Apply the rules approved by the Commission for the AOL Time Warner merger, including a prohibition of service quality discrimination, to all contracts between cable companies and unaffiliated ISPs.
- Require that telephone companies continue under the *Computer Inquiry* framework, which makes telecommunications transmission facilities available to providers of Internet access services on a non-discriminatory basis.
- Require that the broadband facilities and DSL services provided by telephone companies continue to be subject to the unbundling and resale provisions of the Telecommunications Act of 1996.

In conclusion, AARP shares the Commission's confidence that proper implementation of the Telecommunications Act of 1996 will prove beneficial to consumers. However, in order for the competition envisioned in the Act to continue to develop, the UNE-P and TELNC provisions of the Act must be retained. Additionally, AARP urges the Commission to ensure open access to cable broadband facilities and to continue the openness of telephone company facilities, as this is essential to customer choice and the economic benefits of competition. Anything less would be a disservice to all consumers.

If you have any questions, please feel free to contact Jeff Kramer of the Federal Affairs staff, at 202/434-3800.

Sincerely ,

A handwritten signature in black ink, appearing to read "David Certner". The signature is fluid and cursive, with a large initial "D" and a stylized "C".

David Certner
Director
Federal Affairs

DOCKET NO. 02-52

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